

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EDDIE L. SMITH and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, St. Louis, Mo.

*Docket No. 97-1907; Submitted on the Record;  
Issued June 25, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on and after September 6, 1995 causally related to his December 23, 1994 employment injury.

On December 23, 1994 appellant, then a 39-year-old food service worker, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that his right knee popped while he was sweeping the floor.<sup>1</sup> The Office of Workers' Compensation Programs accepted appellant's claim for a right knee strain. Appellant received intermittent continuation of pay for the period December 24, 1994 through February 13, 1995.<sup>2</sup>

On October 17, 1995 appellant filed a recurrence claim (Form CA-2a) alleging that on September 26, 1995 he was in pain from his right knee which had gotten worse since the December 23, 1994 employment injury. Appellant stopped work on September 28, 1995 and was released by his physician to return to work on November 13, 1995. Appellant submitted treatment notes for the period February 13 to August 14, 1995 from St. Louis Clayton Orthopedic and Sports Medicine group, treatment notes dated from September 26 to November 7, 1995 from Premier Care Orthopedics, progress notes dated April 20 and October 17, 1995, a November 3, 1995 magnetic imaging resonance (MRI) scan by Dr. Karen F.

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<sup>1</sup> Appellant had filed a claim on November 19, 1981 alleging that he injured his right knee when he hit his knee on a trash handle and fell onto the wet dock. The Office accepted the claim for contusion to the right knee and paid compensation from November 13 through November 23, 1981 and March 21 through June 16, 1983. The Office authorized diagnostic arthroscopy of the right knee on March 17, 1983. On June 6, 1985 the Office issued appellant a schedule award for a five percent permanent loss of use of right lower extremity. Appellant filed a recurrence claim on December 17, 1991 due to his November 13, 1981 employment injury. In a letter dated April 1, 1993, the Office advised appellant that the medical evidence was insufficient to establish that his current problems were causally related to his November 13, 1981 employment injury.

<sup>2</sup> The Office authorized continuation of pay for the period December 29, 1994 through February 11, 1995.

Goodhope<sup>3</sup> and letters dated October 3, October 11 and October 23, 1995 from Dr. Philip G. George<sup>4</sup> and a statement by appellant. The progress notes report that appellant injured his knee in 1994 when it popped out while working and that his knee was still causing him pain. The treatment notes reveal that appellant's complaints of increasing problems on September 26, 1995 "with his right knee locking, catching and giving way" and continuing with various visits for continued pain in the right knee. In a treatment note dated April 17, 1995, it was noted that appellant's "right lower extremity complaints may be at least partially due to degenerative disc disease in the lumbar spine." Dr. George, in a letter dated October 3, 1995, opined that appellant "currently has symptoms suggesting anterior cruciate insufficiency." In a letter dated October 11, 1995, Dr. George opined that appellant's current symptoms were directly related to his December 1994 employment injury. In his letter dated October 23, 1995, Dr. George recommended appellant undergo an MRI scan due to his December 23, 1994 employment injury to determine the extent of the damage to his knee.

By decision dated December 11, 1995, the Office found the evidence of record insufficient to establish that appellant's right knee condition was causally related to his accepted December 23, 1994 right knee injury.

By letter dated January 17, 1996, appellant requested an oral hearing before an Office representative through his counsel.

By letter dated September 10, 1996, appellant submitted an April 18, 1996 report from Dr. Jerome F. Levy.<sup>5</sup> In his report, Dr. Levy, based upon a review of the medical records, history of appellant's December 23, 1994 employment injury and physical examination, diagnosed possible old right anterior cruciate ligament injury, chronic strain, right knee, carpal tunnel syndrome and chronic strain in both wrists. He determined that appellant had a 15 percent permanent impairment of his right lower extremity due to his December 23, 1994 employment injury.

By decision dated February 19, 1997, the hearing representative affirmed the Office's decision denying appellant's claim for a recurrence of disability. The hearing representative found that appellant had failed to submit any rationalized medical evidence establishing a causal relationship between his December 23, 1994 employment injury and his claim for a recurrence of disability.

The Board finds that the case is not in posture for a decision.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury. This burden includes the necessity of furnishing evidence from a

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<sup>3</sup> Board-certified in diagnostic radiology, nuclear medicine and nuclear radiology.

<sup>4</sup> Board-certified in orthopedic surgery.

<sup>5</sup> Board-certified in surgery.

qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>6</sup> However, while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.<sup>7</sup> The Office has an obligation to see that justice is done.<sup>8</sup>

In support of his claim, appellant submitted treatment notes for the period February 13 to August 14, 1995 from St. Louis Clayton Orthopedic and Sports Medicine group, treatment notes dated September 26 to November 7, 1995 from Premier Care Orthopedics, progress notes dated April 20 and October 17, 1995, a November 3, 1995 MRI scan by Dr. Goodhope and letters dated October 3, October 11 and October 23, 1995 from Dr. George, a statement by appellant and a September 10, 1996 report by Dr. Levy. There is no contradictory medical opinion evidence in the record.

While the treatment notes, progress notes, MRI scans, Dr. George's reports dated October 3, October 11 and October 23, 1995 reports and Dr. Levy's September 10, 1996 report are insufficient to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his alleged recurrence of his knee problems were causally related to the December 23, 1994 employment injury, they constitute sufficient evidence in support of appellant's claim to require further development of the record by the Office.<sup>9</sup> Dr. George's reports reflect that he had knowledge of appellant's December 23, 1994 employment injury and opined that appellant's alleged recurrence on September 26, 1995 is related to the December 23, 1994 employment injury because the symptoms were compatible with the injury described. While Dr. Levy's report is more relevant for a schedule award rather than a claim for recurrence of disability since it gives a rating for permanent impairment. His report, however, does provide some support for appellant's recurrence claim in that he opined that appellant's current disability is related to his December 23, 1994 employment injury, he failed to provide any medical rationale to support this opinion. The Board also notes that there is no medical evidence of record refuting a causal relationship between appellant's alleged recurrence on September 26, 1995 and the December 23, 1994 employment injury.

On remand the Office should prepare a statement of accepted facts and refer it, together with the case record and appellant, if necessary, to a physician in the appropriate field of medicine, for a rationalized medical opinion regarding whether appellant sustained a recurrence of disability commencing September 26, 1995 causally related to his December 23, 1994 employment injury and if so, for what period. Following this and any necessary further development, the Office shall issue a *de novo* decision.

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<sup>6</sup> *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1989); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>7</sup> *Dennis Lasanen*, 43 ECAB 549, 550 (1992); *Robert A. Redmond*, 40 ECAB 796 (1989).

<sup>8</sup> *Dennis Lasanen*, *supra* note 7 at 550; *William J. Cantrell*, 34 ECAB 1233 (1983).

<sup>9</sup> *See Horace Langhorne*, 29 ECAB 820 (1978).

The decision of the Office of Workers' Compensation Programs dated February 19, 1997 is hereby set aside and the case is remanded for further proceedings consistent with this decision of the Board, to be followed by a *de novo* decision.

Dated, Washington, D.C.  
June 25, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member